



# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

Utah State Office  
440 West 200 South, Suite 500  
Salt Lake City, UT 84101  
<http://www.blm.gov/ut/st/en.html>



IN REPLY REFER TO:  
3100(UT-922000)

June 12, 2013

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### DECISION

Southern Utah Wilderness Alliance	:	Protest to the Inclusion of Certain
c/o Steve Bloch	:	Parcels in the August 15, 2006
425 East 100 South	:	Competitive Oil and Gas Lease Sale
Salt Lake City, Utah 84111		

### **Protest Denied In Part and Dismissed In Part**

On June 30, 2006, the Bureau of Land Management (BLM) issued its Notice of Competitive Lease Sale (NCLS) thereby providing notice to the public that certain parcels of land would be offered in a competitive oil and gas lease sale scheduled for August 15, 2006.

In a letter received by the BLM dated July 31, 2006, the Southern Utah Wilderness Alliance<sup>1</sup> (SUWA) protested the following 32 parcels: UT004, UT005, UT009, UT022, UT035, UT036, UT247, UT248, UT264, UT267, UT269, UT272, UT273, UT277, UT278, UT282, UT283, UT284, UT285, UT294, UT295, UT296, UT297, UT299, UT301, UT302, UT306, UT348, UT350, UT351, UT378, and UT379. SUWA also provided supplemental information regarding its protest in a letter dated August 3, 2007, regarding parcels UT272 and UT351.

For the reasons set forth below, the SUWA protest regarding parcels UT301, UT306, and UT351 is denied, and the protest is dismissed for parcels UT004, UT005, UT009, UT022, UT035, UT036, UT247, UT248, UT264, UT267, UT269, UT272, UT273, UT277, UT278, UT282, UT283, UT284, UT285, UT294, UT295, UT296, UT297, UT299, UT302, UT348, UT350, UT378, and UT379.

### **Background**

By errata issued on August 11, 2006, 13 of the protested parcels were deferred (UT022, UT035, UT036, UT247, UT248, UT264, UT267, UT269, UT273, UT348, UT350, UT378, and UT379). As per the NCLS, portions of parcels UT301 and UT306 and all of parcel UT302 were also deferred. On September 20, 2006, the leases were rejected on 3 parcels (UT004, UT005, and UT009). On May 13, 2010, refunds were issued on 11 parcels (UT272, UT277, UT278, UT282,

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<sup>1</sup> The SUWA also submitted their protest on behalf of the Natural Resources Defense Council, The Wilderness Society, Grand Canyon Trust and the Coalition of National Park Service Retirees. The SUWA lists 31 parcels (at page 1) but actually addresses 32 within its protest.

UT283, UT284, UT285, UT294, UT295, UT296, and UT297). After the lease sale, a noncompetitive offer was not received on parcel UT299, and the two year period of availability has expired for this parcel.

Therefore, the protest (as supplemented) for the above parcels or portions thereof that were deferred, rejected, refunded or unsold is dismissed as moot. The discussion below addresses the remaining three protested parcels (UT301, UT306 and UT351) within the BLM Moab and Monticello Field Offices.

### **Protest Contentions and BLM Responses**

Overall, the SUWA alleges that in offering the subject parcels for lease, the BLM has violated the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), and the Endangered Species Act (ESA).

Protest Contention: Pursuant to Instruction Memorandum (IM) 2004-110 (Change 1 and 40 Code of Federal Regulations (CFR) § 1506.1, BLM should defer 9 parcels located in or near the following landforms/areas: San Juan River/area of critical environmental concern (ACEC), Beaver Creek/Delores River, Labrynth Canyon, Kingston Canyon ACEC, and Parker Mountain ACEC.

BLM Response: Except for parcel UT351, all of the remaining 8 parcels listed in the protest were deferred or refunded. As such, the SUWA's protest (at 3 items 2-5, pages 9-12) is dismissed as moot on those 8 parcels.

As the SUWA points to in its protest (at 3 item 1, page 11), parcel UT351 occurs within the floodplain of the San Juan River. The Monticello Field Office Record of Decision and Approved Resource Management Plan (RMP) dictates that oil and gas leasing be administered with a no surface occupancy stipulation. On September 19, 2011, the lessee agreed to and accepted the stipulations as warranted by the 2008 RMP including a no surface occupancy provision protecting San Juan River's floodplain.

The BLM is not managing the San Juan River as an ACEC (RMP at page 31, table 2). Likewise, the San Juan River segments 1-4 were not identified as suitable for designation into the National Wild and Scenic River System (RMP at page 131).

Protest Contention: BLM failed to analyze the impacts of oil and gas leasing and development to Golden Spike National Historic Site and Arches National Park.

BLM Response: The SUWA (at 4a, pages 13-14) specifically identifies concerns over the level of planning and associated analysis of oil and gas leasing including additional protective stipulations necessary to protect the integrity of the Golden Spike National Historic Site. As previously stated, the bids were rejected by the BLM and therefore the SUWA's protest on this point is moot.

The SUWA (at 4bi, pages 15-17) expresses concern over the management of visual resources on 8 parcels the SUWA feels are in close proximity to Arches National Park. After the deferrals, refunds and unsold status of certain parcels, only parcels UT301 and UT306 remain here for resolution.

As suggested by the SUWA (at page 17), BLM completed the Moab Field Office planning effort in 2008 and has deferred leasing of these parcels. The National Park Service was a cooperating agency throughout the plan revision process. Parcel UT301 occurs within oil and gas leasing categories: open with standard stipulations and no surface occupancy. Likewise parcel UT306 is open under no surface occupancy and special stipulations. The corresponding visual resource

management categories are: class II and III on each parcel. Air quality (SUWA at 4.b.ii., page 17) was also analyzed in the 2008 planning effort.

By letters dated December 1, 2011 and April, 19, 2013, the lessee agreed to and accepted lease stipulations and notices for both parcels as defined in the Moab Field Office Record of Decision and Approved Resource Management Plan. As such, in those portions of the parcels that occur within the Visual Resource Management (VRM) Class II category, BLM is applying a controlled surface use stipulation as per Appendix A, page A-7, as maintained. In addition to VRM, BLM also applies stipulations specifically to address emission constraints on internal combustion gas field engines as per Appendix A, (Maintenance Change Number 31) which is based on State of Utah's air quality mitigation strategies (Appendix J).

Protest Contention: BLM is violating NHPA by failing to adequately consult with members of the interested public regarding the effects of leasing all the protested parcels. Lastly, BLM's DNA process violates the NHPA and Protocol (PA) § IV.C, which states that BLM will seek and consider the views of the public when carrying out the actions under terms of this protocol.

BLM Response: As demonstrated by the SUWA's protest, members of the public had the opportunity to raise concerns to the BLM regarding parcels proposed for inclusion in the sale and the opportunity to protest such inclusion. Although the SUWA (at B.2, pages 19-20) now argues that the BLM failed to adequately consult with members of the public or questions BLM's use of the DNA process, the SUWA has not informed the BLM what degree of public participation it believes is required under the NHPA or the PA, or provided any legal authority for its assertions. Moreover, the SUWA's protest does not demonstrate that the BLM's Section 106 consultation has overlooked a potentially eligible property located within the subject parcels.

Overall, the SUWA does not specify with facts or information to show how its allegations apply to parcels UT301, UT306, and UT351. For the BLM to have a reasonable basis to consider future protests, the SUWA must identify the specific ground for protest and explain how it applies to each protested parcel. Any allegations of error based on fact must be supported by competent evidence.

### **Conclusion**

As the party challenging the BLM's offering of parcels UT301, UT306, and UT351 for leasing, the SUWA bears the burden of establishing that the BLM's action was premised on a clear error of law, error of material fact, or failure to consider a substantial environmental question of material significance. The SUWA has not met this burden. To the extent that the SUWA has raised any allegations not discussed above, they have been considered and are found to be without merit or determined to be irrelevant given the parcels that were deferred, refunded, rejected or remain unsold.

The SUWA protest regarding parcels UT301, UT306, and UT351 is hereby denied and the protest on the remaining 29 parcels is dismissed. The BLM has received offers on parcels UT301, UT306 and UT351 and will issue leases to the successful bidder after issuing this and any other relevant decision.

### **Appeal Provisions**

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 C.F.R. Part 4 and instructions contained in Form 1842-1 (Enclosure 1). If an appeal is taken, the notice of appeal must be filed in this office (at the

address shown on the enclosed Form) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition for a stay pursuant to 43 C.F.R. Part 4, Subpart B § 4.21, during the time that your appeal is being reviewed by the Board, the petition must show sufficient justification based on the standards listed below. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall be evaluated based on the following standards:

1. The relative harm to the parties if the stay is granted or denied;
2. The likelihood of the appellant's success on the merits;
3. The likelihood of immediate and irreparable harm if the stay is not granted; and
4. Whether the public interest favors granting the stay.

Copies of the notice of appeal, petition for stay, and statement of reasons also must be submitted to the Office of the Regional Solicitor, Intermountain Region, 125 South State Street, Suite 6201, Salt Lake City, Utah 84138, at the same time the original documents are filed in this office. You will find enclosed the names and addresses of the parties (Enclosure 2) who purchased these parcels at the August 15, 2006, lease sale, and who, therefore, must be served with a copy of any notice of appeal, petition for stay, and statement of reasons.

If you have any further questions, contact Pam Schuller of this office at (801) 539-4050.

/s/ Jenna Whitlock

*for* Juan Palma  
State Director

Enclosures

1. Form 1842-1
2. List of Purchasers

cc: James Karkut, Office of the Solicitor, Intermountain Region,  
125 South State Street, Suite 6201, Salt Lake City, UT 84138

bcc: Lease Sale Book August 2006  
Reading File: UT-920  
Central Files UT-950

UT922 pschuller:SUWA Protest Response 0806 6-3-13

Enclosure 1  
Form 1842-1

Enclosure 2  
List of Purchasers

Parcel (Lease Number)

UT 301 (UTU84955)

UT 306 (UTU84956)

UT351 (UTU84964)

Operator

Retamco Operating Inc.  
c/o Joe Glennon, Vice President  
One S. Broadway Avenue  
Red Lodge, MT 59068

John S. Butcher  
1301 Pennsylvania St, 9th Floor  
Denver, CO 80203